In the Supreme Court of the United States.

DECEMBER TERM, 1868.

UNITED STATES, appellants,
vs.
THE STEAMER FROLIC. } No. 29.

Appeal from the Circuit Court of the United States for the eastern district of Louisiana.

STATEMENT FOR THE UNITED STATES.

This case is similar to those which immediately precede it on the docket. The claimants are John Freese and John Hienn, of New Orleans, La., and B. F. Goodwin, of Wheeling, West Virginia; but it is observed that the former, in a deposition made subsequent to filing his claim, denies that he has any interest in the boat, and states that he has not had any since July 8, 1863, when he sold his interest out. (Record, p. 19.)

It is further shown by the testimony of Sanders, Airey and Gresham, that the steamer was employed in the rebel service on Red river in the years 1863, 1864 and 1865, (Record, p. 12, 13.) Airey, who was a quartermaster in the rebel service, and to whom the boat was consigned with army supplies, knows of "no instance when Mr. Freese made any objection to

serve with his boat." Sanders, who was also an officer in the same service, and subject to whose orders the boat was sometimes placed, declares that he used no force against the captain, and "don't know that any was used by other confederate officers."

The defence is, that the unlawful use of the boat, if any such there was, was obtained by the "application of illegal and irresitible physical force," against the consent of the owners, etc., (Record, p. 11;) and that the property was protected by the terms of the convention of May 26, 1865, between Generals Smith and Canby, (Record, p. 14.) It is sufficient to observe that no evidence is furnished proving the employment of actual force, nor is it believed that the convention referred to afforded any protection to property which was theretofore forfeitable under any act of Congress.

It would seem, from the testimony in this case, that the Frolic was laid up at New Orleans in April, 1861, and that she was then owned by B. F. Goodwin and John Freese in equal parts.

The owners, after laying her up, returned to their homes in Wheeling.

In January, (29th,) 1862, Freese returned to the boat against the wish of Goodwin, who remained at Wheeling.

New Orleans was captured in May, 1862. At the time of the return of Freese to the boat the city was, of course, *under the control of the rebels.*

The witness, James A. Gresham, says, that "at the fall of the city of New Orleans she was at Shreveport, and had been used by the confederates up to the time of the surrender."

Freese says: "She was first pressed into the service of the Confederacy in May, 1862, against the express wishes and protests of her owners."

How long this impressment lasted, or what was its purpose, does not appear.

It did not last, probably, very long.

Freese says: "In February, 1864, she was *again* impressed into the service and taken possession of by the Southern Confederacy." After these temporary impressments ceased she was probably continuously engaged in the public transport service of the rebels, within their lines.

R. W. Sanders alludes to one of these occasions when she was under impressment. (Rec., p. 12.)

He says, "the boat was once taken from him (Freese) by the government, and appraised, and afterwards returned to him."

Freese says (Rec., p. 19) he sold out his interest in the boat in July, 1863, but that he remained on board as captain till September, 1865.

He does not state who bought his interest; but it was probably one of the present claimants, John Hienn.

Although Freese disclaims any interest in the boat, we find that he is one of the principals in the bond executed for her release. (Rec., p. 8.)

There is no testimony which throws any light upon the conduct or relations of the person who purchased Freese's interest in the boat in July, 1863.

The loyalty of Goodwin, who remained throughout the war in the North, is fully established. There is nothing to show that *he* consented to the employment of the steamer in this business. She was beyond his control; and it is probable that any effort of his to prevent the unlawful employment of the steamer would have been unsuccessful. But, so far as Freese and the person who bought *his* share are concerned, there is nothing in the record to exculpate *them* in this matter, or that can prevent the forfeiture of *their* interest in the boat.

The moiety owned by Goodwin stands on a different footing, and should not, perhaps, be confiscated.

The court may be able to reach what would seem to

be the justice of this case, by entering a decree affirming the judgment of restitution as to the moiety of the vessel owned by *Goodwin*, and reversing the decree as to the *other* moiety, which should be condemned.

J. Stanley Ashton
Asst. Atty. Gen.